

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No.887 of 2003 & CM No.1353/2003**

% Decision Delivered On: 25th August, 2011.

UNION OF INDIA

. . . PETITIONER

Through: Nemo.

VERSUS

RAKESH KUMAR SHARMA

. . .RESPONDENT

Through: Mr. J.P. Sharma, Advocate.

CORAM :-

HON'BLE MR. JUSTICE A.K. SIKRI

HON'BLE MR. JUSTICE M.L. MEHTA

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J. (ORAL)

1. The respondent herein was appointed as Extra Branch Post Master (hereinafter referred to as 'EDBPM), now designated as Gramin Dak Sevak, at Bhallai (Surir), District – Mathura vide orders dated 25.9.1995. He joined the said post on 06.10.1995. For appointment to this post, one of the conditions was that the candidate should have adequate means of livelihood and must be owning the property so that

he is able to offer space to serve as the agency premises for postal operations. Relevant portion of this condition reads as under:

“Income and ownership of property:

The person who takes over the agency (ED SPM/ED BPM) must be one who has an adequate means of livelihood. The person selected for the post of ED SPM/ED NBPM must be able to offer space to serve as the agency premises for postal operations. The premises must be such as will serve as a small postal office with provision for installation of even a PCO (Business premises such as shops, etc., may be preferred).

Income and ownership of property:

ED Agents of all categories including ED Delivery Agents should furnish security of Rs.4,000 subject to the condition that the amount of security should be increased/decreased so as to be equal to the amount of cash and valuables that is authorized to be entrusted to them under the orders of Divisional Superintendent or that Head of the Circle, as the case may be.”

2. The clarifications to the aforesaid provision was given in the following manner:

“It is clarified that the above preference to the subject to the first and foremost condition that the candidate selected should have an adequate means of livelihood, which though already prescribed, seems to have been ignored for some time past especially in view of these preferential categories being introduced in the above orders.

The criterion to judge “adequate means of livelihood” should be that, in case he loses his main source of income, he should be adjudged as incurring a disqualification to continue as EDSPM/EDBPM. In other words, there must be absolute insistence on the

adequate source of income of ED SPM/BPM must be just supplementary to his income. To ensure this condition, the candidate must be able to offer office space to serve as the agency premises for postal operations as well as public call office and as such, business premises such as shops, etc., must be preferred regardless of the various categories of preferences mentioned above.”

3. Six candidates applied for this post. The marks obtained by them in the High School examination were taken into consideration as per which the respondent was ranked at Sl. No.3. Two persons, who had higher marks than him were Shri Ram Gopal and Shri Mukesh Kumar, who were placed at Sl. No.1 and 2 respectively. Reports were obtained by the Post Master from the Revenue Authorities, who were six in number. After verification, the Revenue Authorities submitted the report to the effect that except the respondent, no other candidate was having landed property and other two were, in fact, wholly dependent on their parents.
4. Keeping in view the aforesaid facts, it was only the respondent having landed property, he was offered the aforesaid post of EDBPM. Many months thereafter, Shri Mukesh Kumar sent a complaint dated 23.5.1996 stating that the reports submitted by the Revenue Authorities were incorrect, who was at Sl. No.2. According to him, both he

and Ram Gopal, who was a Sl. No.1 were having independent source of income from land of their own. On the basis of this complaint, afresh report from the Revenue Authorities was obtained, which confirmed that these two candidates were also having land and income therefrom. Based upon the same, a show cause notice dated 19.6.2000 was issued to the respondent as to why his appointment be not terminated. The respondent, on receiving this show cause notice, approached the Central Administrative Tribunal ('the Tribunal' for brevity) by filing OA No.1199/2000 on 28.6.2000. This OA was disposed of vide orders dated 16.5.2001 directing the petitioner herein to consider the representation dated 23.6.2000 of the respondent and pass reasoned and speaking order within two months from the date of the order of the Tribunal addressed to the Director, Postal Services.

5. Pursuant to the aforesaid directions, the representation was considered and rejected vide reply dated 06.8.2001. This led the respondent to approach the Tribunal again by filing OA No.2225/2001 impugning the rejection order dated 06.8.2001. This OA has been decided by the Tribunal in favour of the respondent vide impugned decision dated

09.7.2002 quashing the rejection order and directing the petitioner to reinstate the respondent with all consequential benefits. The reason which persuaded the Tribunal to allow the OA of the respondent is that the Director, Postal Services had not considered the representation of the respondent at all instead he had referred to certain charge-sheets served upon him in a few cases giving an impression that the impugned orders were in the nature of punishment orders. According to the Tribunal, it is a settled law that a punishment order cannot be passed without affording a reasonable opportunity to the delinquent official to state his case. The impugned order was, in those circumstances, violative of the principles of natural justice.

6. Challenging this order, the present writ petition is filed. At the time of the arguments, nobody appeared on behalf of the petitioner. Learned counsel for the respondent argued the matter and put us from the record. We find that in his representation dated 11.8.2001, the respondent had submitted that the pursuant to the Notification issued by the petitioner for filling up of the posts in question, the respondent had applied together with the documents requirement in the Notification after proper departmental

enquiry conducted by the petitioner, the respondent was found most abled candidate amongst all the candidates for the said post and was validly appointed. It was the duty of the Department to make necessary inquiries and appoint a suitable eligible candidate. He had, after his appointment, rendered three years continuous services and his services, therefore, could not have been terminated for no fault of his.

7. In the rejection order dated 06.8.2001 vide which respondent's representation was rejected, the aforesaid submissions of the respondent were not dealt with at all. In the first instance, the respondent is incorrect/mistakes for making a representation to the Director, Postal Services, Agra whereas he should have submitted the same to the SSPOs, Mathura, which led to the delay in taking the decision. Thereafter, the only reason given for rejecting the representation is contained in the following sentence:

"Further, it has been you stated in your representation ibid that your work was satisfactory, while the SSPOs, Mathura had said that you have charge sheet in three cases."

8. The Tribunal is, thus, right in observing that the representation of the respondent was not considered at all. The argument of the respondent was that insofar as he is

concerned, he fulfilled the eligibility condition and was rightly appointed to the said post. There was no fault of his, if there was some wrong verifications conducted in respect of other candidates; and that he had already served the Department for more than three years. All these aspects are not adverted to at all which were necessary. Instead, it is stated that he had been served with charge-sheets in three cases and this was not the ground for which show cause notice was served upon him. The facts disclosed clearly reveal that the trigger point was the complaint of Shri Mukesh Kumar, who had alleged that the Revenue Authorities had given wrong report about the independent income of respondent and he should have been preferred appointment than the respondent. When that was the basis of show cause notice and the respondent had stated that he could not be faulted with and he had served for more than three years, axe should not fall on him because the purported mistakes had not been committed by him. The Tribunal while disposing of the first OA of the respondent direct that it was this aspect which the competent authority to look into the representation of the respondent and pass a reasoned and speaking.

9. We, thus, find no fault with the impugned orders. We may point out at this stage that while issuing notice, operation of the impugned decision was stayed which stay was made absolute on 04.8.2006 when Rule D.B. was issued in the writ petition. As a result thereof, the respondent is still out of service. Thus, while directing the petitioner to take the respondent in service, we are of the opinion that no salary for the interim period shall be granted to the respondent to which course of action, the learned counsel for the respondent conceded at the time of arguments. Subject to above, we discharge the Rule and dismiss the writ petition.

(A.K. SIKRI)
JUDGE

(M.L. MEHTA)
JUDGE

AUGUST 25, 2011
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